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APPENDIX A

SUMMARY OF THE RRIM DECISIONS

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A. Decision 08-12-059 awarded incentives based on the Utilities' self-reported savings results rather than the verified savings of the Energy Division.

The Utilities filed a Petition for Modification of both D.07-09-043 and D.08-01-042 on August 15, 2008,[1] claiming that "a second petition for modification is needed to enable the utilities to receive their incentives in the time frame contemplated by Decision 07-09-043."[2] The Utilities first requested that if the Energy Division fell behind in the schedule for the EM&V reports which provide the basis for the interim earnings claims and it would be impossible for the Commission to authorize incentives in the scheduled calendar year, then the Utilities "should be allowed to file incentive claims using their self-reported energy savings and costs."[3] The Utilities requested elimination of the requirement to use updated DEER estimates for their interim earnings claims and sought the opportunity to bring measurement issues to the Commission for review.[4] Finally, the Utilities requested immediate payment of interim incentives for 2006-2007 totaling $152.7 million.[5]

ORA and TURN opposed the Utilities' Second PFM, pointing out that a significant cause of the delay in the issuance of the EM&V report was the need to update the DEER data base, a requirement the Commission imposed in response to the Utilities' First PFM.[6] Moreover, ORA and TURN's calculations showed that the Utilities' request for incentives appeared to be greatly overstated.[7] ORA and TURN noted that delaying payment of incentives to allow the Energy Division to complete its calculations outweighed the potential harm to the Utilities, given the risk

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[1] *Petition for Modification of Decisions 07-09-043 and 08-01-042 by Pacific Gas and Electric Company (U 39 M), Southern California Edison Company (U 338 E), San Diego Gas & Electric Company (U 902 M),and Southern California Gas Company (U 904 G), August 15, 2008* (Utilities' Second PFM).

[2] Utilities' Second PFM, p. 1.

[3] Utilities' Second PFM, p.2.

[4] Utilities' Second PFM, p. 4.

[5] Utilities' Second PFM, p. 7.

[6] *Response of the Division of Ratepayer Advocates, The Utility Reform Network and the Community Environmental Council to Petition for Modification of Decisions 07-09-043 and 08-01-042 by Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company and Southern California Gas Company*, September 15, 2008 (ORA/TURN Response to Utilities' Second PFM), p. 7.

[7] ORA/TURN Response to Utilities' Second PFM, pp. 17-20 and the accompanying Appendices A and B (estimating savings using information received in response to an ORA data request as well as draft updated 2008 DEER values).

that using self-reported savings could result in the payment of undeserved, yet unrefundable incentives.[8]

On November 18, 2008, rather than in August as originally planned, the Energy Division issued its *"Energy Efficiency 2006-2007 Verification Report, Review Draft"* (Draft Verification Report). The Draft Verification Report showed that SoCalGas would earn a 2008 interim incentive payment of $3.6 million, but that the other Utilities were not entitled to incentives.[9] The Energy Division's Draft Verification Report demonstrated that the importance of using independently verified data was not hypothetical: the report revealed significant differences between the Utilities' self-reported savings and the savings calculated through the process of independent verification.

Notwithstanding the Draft Verification Report that showed three of the four Utilities would not be entitled to incentives, D.08-12-059 awarded incentives using the Utilities' self-reported savings, but increased the hold back to 65%, resulting in payments of $41.5 million to PG&E, $24.7 million to SCE, $10.8 million to SDG&E and $5.2 million to SoCalGas for the 2006-2007 earnings period.[10] The Commission (1) declined to eliminate the requirement to use updated DEER information to calculate interim claims[11] and (2) revised the final true-up provisions so that if a utility's MPS achievement as calculated by the final true-up was in the deadband, it would be entitled to retain interim incentive payments, but would not be allowed to continue earning at the 9% sharing rate on the final verified PEB.[12] The Commission ordered that before the verification reports could be used for calculating RRIM incentives, they must be issued by draft resolution for the Commission's consideration and adoption, including "detailed information regarding the underlying assumptions relied upon as well as supporting information and documentation that provides the basis for those assumptions."[13]

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[8] ORA/TURN Response to Utilities' Second PFM, pp. 1-2, 10-11.

[9] *Draft Verification Report*, Table ES1: Net Benefits and Allowable Earnings, p. 7.

[10] D.08-12-059, pp. 1-2, Ordering Paragraph 5, p. 28.

[11] D.08-12-059, Ordering Paragraph 4, p. 28.

[11] D.08-12-059, Conclusion of Law 4, p. 26.

[12] D.08-12-059, Ordering Paragraph 4, p. 28.

[13] D.08-12-059, p. 21 and Ordering Paragraph 4, p. 28.

ORA and TURN filed an Application for Rehearing of D.08-12-059 asserting, among other things, that the awards were not just and reasonable, and that the awards of incentives based solely on the Utilities reported savings was not based on substantial evidence.[14]

B. Decision 09-12-045 awarded incentives using the Energy Division's verified energy savings to calculate the PEB, but using the Utilities' *ex ante* assumptions to compare energy savings to the Commission's goals.

Decision 09-12-045 awarded incentives in response to the Utilities' second interim claims, which covered the entire 2006-08 program period. The Commission considered and rejected both a settlement that PG&E, SDG&E and SoCal Gas sponsored, and SCE's proposal for the award of incentives to its shareholders, as failing to meet the requirement that ratepayers pay incentives only for savings that are independently verified.[15] The Commission recognized that:

> "the Energy Division's Second Verification Report provides the appropriate basis for setting the second installment of interim incentive claims. The Commission officially adopted the Energy Division Verification Report by Resolution E-4272 on October 15, 2009. The Commission previously recognized the importance of independent verification in ensuring that ratepayers get value commensurate with their energy efficiency investment, that programs are well designed, and that energy efficiency is considered a reliable resource comparable to supply side resources. The Energy Division Second Verification Report is the only source in the record that offers an independent assessment of earnings from a neutral perspective."[16]

While the Commission used the Energy Division's Second Verification Report to calculate the PEB, it used the Utilities' proposed unmodified *ex ante* assumptions to compare the Utilities' results with the Commission goals, noting that the goals had

> "not been revised to reflect updated information and assumptions…. Rather than using the shared savings rate calculated using the verification report data, we will use a 12% shared savings rate and apply it to the PEB

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[14] *Application for Rehearing of Decision 08-12-059*, filed by ORA and TURN February 2, 2009 in R.06-04-010, pp. 10-28.

[15] D.09-12-045, pp 36, 51.

[16] D.09-12-045, pp. 51-2.

> as calculated by the Energy Division Verification Report as modified herein."[17]

Decision 09-12-045's award of incentives using the 12% share rate ignored the detailed analysis in the Energy Division's Second Verification Report and was at odds with the decision's recognition that the Second Interim Verification Report was the appropriate basis for determining the second interim claim. As a result, PG&E received $33,430,614, SCE received $25,652,348, SDG&E received $300,572 and SoCalGas received $2,111,021.

TURN filed an Application for Rehearing of D.09-12-045 on January 28, 2010, claiming that using the Utilities' *ex ante* assumptions to determine their progress in meeting Commission goals resulted in "artificially setting the earnings rates at 12% for all [U]tilities, thereby committing the same errors that exist in D.08-12-059 challenged in TURN and ORA's Application for Rehearing of that decision."[18]

C. Decision 10-12-049 modified the RRIM to allow the calculation of incentives using outdated savings parameters from the early 2000's.

Decision 10-12-049 resolved the final true-up payments for energy efficiency. Rather than comparing verified energy savings to the 2006-2008 energy efficiency goals as the basis for the award of incentives, D.10-12-049 revised the RRIM to ensure that shareholders received incentives. D.10-12-049 determined:

> "rather than assessing the performance of the [U]tilities' energy efficiency programs based on updated parameters, as was our original intent, we modify the mechanism such that the performance against the goals, as well as the total savings attributed to the utility programs for purposes of determining incentives are calculated using the parameters that were in place at the time the Commission approved the utility energy efficiency portfolios."[19]

The *ex ante s*avings parameters in place when the Utilities filed their portfolios in 2005 were based on studies completed before 2005 or on default values derived from studies completed in the 1990's.[20] Members of the Peer Review Group,[21] including TURN and ORA

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[17] D.09-12-045, p. 67.

[18] *Application for Rehearing of Decision 09-12-045*, filed January 28, 2010 by TURN in this proceeding.

[19] D.10-12-049, p. 3.

[20] *Reply Comments of The Utility Reform Network on Proposed Scenarios and Assumptions for*

argued that some of those parameters were likely to overstate the energy savings that the portfolios would actually deliver,[22] a concern that was borne out by the evaluated savings results.

Decision10-12-049 lowered the sharing rate to 7% in recognition of the lowered risk that the Utilities faced given the Commission's reliance on outdated energy savings parameters. The lowered sharing rate did not fairly compensate ratepayers, who paid nearly $212 million incentives and nearly $2 billion in program costs, for energy savings that fell far short of the goals established at the outset of the RRIM. In fact, the *2006-2008 Energy Efficiency Evaluation Report* showed that the Utilities achieved only 63% to 78% of the 2004-2008 Cumulative Goals on which the RRIM for 2006-2008 was based.[23]

While D.10-12-049 stated it would not "rely solely on the results contained in the Energy Division[Second Verification] report" for purposes of the final true-up, the decision acknowledged that the information in the report is "valuable and useful for a variety of purposes" other than the payment of incentives and did not purport to change the results of the report.[24]

ORA and TURN filed an Application for Rehearing of D.10-12-049, claiming, among other things, that the decision failed to comply with the substantial evidence standard of Public Utilities Code Section 1757, resulted in rates that were not just and reasonable, and reflected an abuse of the Commission's discretion.[25]

Calculating 2006-2008 Energy Efficiency Program Results, June 11, 2010, p. 7 (citing a report from a CALMAC Public Workshops on PY 2001 Energy Efficiency Programs, September 25, 2000, p. 6. This report can be accessed on the CALMAC searchable database as study "SDG0218.01"by putting the study ID number in the search text field.)

[21] Decision 05-01-055 established advisory groups to the Utilities, including Peer Review Groups or PRGs. The PRG was chaired by Energy Division staff and PRG members had no financial interest in the outcome of the Utilities' bid solicitations. The PRG responsibilities included review the Utilities'submittals to theCommission and assessing the Utilities' overall energy efficiency portfolio plans. D.05-01-055, pp. 103-105.

[22] *Assigned Commissioner's Ruling Addressing Net-To-Gross Ratio True-Up and Methodology for Lighting Programs in the 2006-2008 Energy Efficiency Portfolios,* October 5, 2007, p.3.

[23] *2006-2006 Energy Efficiency Evaluation Report*, Table 25, p. 101, attached to this proposal as Appendix B-3.

[24] D.10-12-049, p. 30.

[25] *Application for Rehearing of Decision* 10-12-049, filed January 26, 2011 by ORA and TURN in this proceeding, pp. 12-28.